

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD E. ENYART, JR.,

Plaintiff,

vs.

**Case No.: 2:09-cv-687
JUDGE SMITH
Magistrate Judge King**

SHERIFF JIM KARNES, *et al.*,

Defendants.

ORDER

On February 25, 2015, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Defendants Daniel Thacker and Daniel Waldren's Motion for Summary Judgment (Doc. 212) be denied and that Plaintiff's Motion for Sanctions (Doc. 221) be denied. (*See Report and Recommendation*, Doc. 224). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Defendants' Objections to the Magistrate Judge's *Report and Recommendation*. (*See* Doc. 225). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Defendants argue that the Magistrate Judge's *Report and Recommendation* is erroneous in two respects: (1) that Defendants provided sufficient evidence demonstrating that they are entitled to qualified immunity; and (2) that Plaintiff has failed to establish that Defendants acted with deliberate indifference to his health or safety. (*See* Defs.' Objections at 1-2, Doc. 225). However, both of these issues were previously considered by the Magistrate Judge in the *Report*

and Recommendation. Defendants have set forth corroborating evidence to testimony previously submitting and considered by this Court in the previous motion for summary judgment. The Magistrate Judge acknowledged that “[a]lthough defendants may have pointed to a potential inconsistency in plaintiff’s allegations and evidence regarding the time of day that plaintiff was escorted to the fifth floor of FCCCI, the Court finds that plaintiff has nevertheless raised an issue of fact as to whether the failure to protect him from risk of harm was sufficiently serious.” (*Report and Recommendation* at 10). This dispute between the parties is the exact reason why summary judgment must be denied. As stated in the Report and Recommendation, “[t]his dispute merely confirms, however, the existence of a genuine dispute of material fact that serves to preclude summary judgment.” (*Id.* at 13). Therefore, for the reasons stated in the *Report and Recommendation*, this Court finds that Defendants’ objections are without merit.

The *Report and Recommendation*, Document 224, is **ADOPTED** and **AFFIRMED**.

Defendants’ Motion for Summary Judgment is DENIED and Plaintiff’s Motion for Sanctions is DENIED.

The Clerk shall remove Documents 212, 221, 224 and 225 from the Court’s pending motions list. The parties are encouraged to schedule a mediation with this Court. If both parties agree, they should contact the Magistrate Judge’s chamber to schedule. Additionally, the parties shall report to the Magistrate Judge’s chambers on or before May 15, 2015, as to whether they consent to a trial before the Magistrate Judge.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT